

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1358

**Introduced by Assembly Members Hill and Nava
(Coauthor: Assembly Member Brownley)**

February 27, 2009

An act to add Part 9 (commencing with Section 49700) to Division 30 of the Public Resources Code, relating to product management.

LEGISLATIVE COUNSEL'S DIGEST

AB 1358, as amended, Hill. Product management: disposable food containers.

The California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, among other things, prohibits a person from selling a food or beverage container in this state that is labeled with the term “compostable” or “marine degradable,” unless the food or beverage container meets certain requirements.

This bill would define terms for its purposes and prohibit a food vendor, ~~restaurant, or retail food vendor~~ from dispensing prepared food to a customer in a disposable ~~expanded~~ polystyrene food container, a disposable nonrecyclable plastic food container, or a disposable nonrecycled *content* paper container. The bill would authorize a food vendor, ~~restaurant, or retail food vendor~~ to dispense prepared food to a customer in a compostable plastic container in a jurisdiction where organic waste is collected curbside for composting, ~~and to dispense prepared food in a recyclable plastic container or a recycled paper container. The bill would prohibit a state facility from using a polystyrene foam or expanded polystyrene foam food service container,~~

~~and would prohibit a state department or state agency from purchasing or acquiring polystyrene foam or expanded polystyrene foam disposable food service ware for use at state facilities. A state-managed concession, state-sponsored event, or event with a permit issued by the state would be prohibited from distributing or utilizing disposable food service ware containing expanded polystyrene, polystyrene, nonrecyclable plastic, or nonrecycled paper, and an agent, contractor, or vendor doing business with the state would be prohibited from using polystyrene foam, expanded polystyrene foam, nonrecycled paper, or nonrecyclable plastic disposable food service ware in state facilities or on state projects within the state. The bill would include legislative findings and declarations that the matters covered by the bill are matters of statewide interest and concern.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Part 9 (commencing with Section 49700) is added to Division 30 of the Public Resources Code, to read:

PART 9. PRODUCT MANAGEMENT

CHAPTER 1. DEFINITIONS

CHAPTER 2. POWERS AND DUTIES

CHAPTER 3. ENFORCEMENT AND PENALTIES

CHAPTER 5. TAKE OUT FOOD CONTAINERS

49760. For the purposes of this chapter, the following terms have the following meanings:

(a) "Compostable" means all materials in the product or package will breakdown into, or otherwise become part of, usable compost, including, but not limited to, soil-conditioning material and mulch, in a safe and timely manner consistent with the composting facility used by the jurisdiction that collects organic waste. To comply with this definition, compostable disposable food service ware

1 shall meet ASTM standard D6400 for compostability and shall be
2 clearly labeled.

3 (a) “Compostable” means the American Society for Testing
4 and Materials Standard Specification for Compostable Plastics
5 D6400, as published in September 2004, except as provided in
6 subdivision (c) of Section 42356.1.

7 (b) “Customer” means a person obtaining prepared food from
8 a restaurant or retail food vendor.

9 (c) “Disposable food service ware” means all containers, bowls,
10 plates, trays, cartons, cups, lids, straws, forks, spoons, knives, and
11 other items that are designed for one-time use and on or in which
12 a restaurant or retail food vendor directly places or packages
13 prepared foods or that are used to consume foods. “Disposable
14 “Disposable food service ware” includes, but is not limited to,
15 service ware for takeout foods or leftovers from partially consumed
16 meals prepared at a restaurant or retail by a food vendor.

17 (d) “Expanded polystyrene food container” means a rigid plastic
18 packaging container, as defined in Section 42301, that meets all
19 of the following conditions:

20 (1) Polystyrene is the sole resin used to produce the rigid plastic
21 packaging container.

22 (2) The container is required to be labeled with a “6” pursuant
23 to subdivision (a) of Section 18015.

24 (3) The container is used, or is intended to be used, to contain
25 food, as defined in Section 109935 of the Health and Safety Code.

26 (d) “Polystyrene food container” means a plastic container,
27 comprised of a majority polystyrene plastic resin, that is used to
28 contain prepared food. The container is used, or is intended to be
29 used, to contain food, as defined in Section 109935 of the Health
30 and Safety Code.

31 (e) “Food vendor” means a restaurant or retail food and beverage
32 vendor located or operating within the state. Food vendor includes,
33 but is not limited to, itinerant restaurants, pushcarts, vehicular
34 food vendors, a store, a shop, a sales outlet, or other
35 establishments, including a grocery store or a delicatessen.

36 (f) ~~“Nonrecyclable”~~ “Nonrecyclable plastic food container”
37 means a plastic food container not made from Polyethylene
38 polyethylene terephthalate (PET or PETE) identified as number
39 “1,” or High Density Polyethylene high density polyethylene
40 (HDPE) identified as number “2,” using resin codes established

~~by the American Chemistry Council. The Legislature finds and declares that these are the most common types of plastics recycled in California.~~

(g) “Nonrecycled *content* paper container” means a food container containing less than 100 percent post consumer recycled paper content.

(h) “Prepared food” means food or beverages, that are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption. “Prepared food” does not include raw, butchered meats, fish, or poultry, sold from a butcher case or similar retail appliance. “Prepared food” may be eaten either on or off the premises, and includes take-out food.

(i) “Recyclable plastic food container” means a plastic food container made from ~~Polyethylene~~ *polyethylene* terephthalate (PET or PETE) identified as number “1,” or High Density Polyethylene *high density polyethylene* (HDPE) identified as number “2,” using resin codes established by the American Chemistry Council. ~~The Legislature finds and declares that these are the most common types of plastics recycled in California.~~

(j) “Recycled *content* paper container” means a food container containing 100 percent post consumer recycled paper content.

(k) ~~“Restaurant” means an establishment located within the state that sells prepared food for consumption on, near, or off its premises by a customer. “Restaurant” includes itinerant restaurants, pushcarts, and vehicular food vendors.~~

~~(l) “Retail food vendor” means a store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the state that sells prepared food.~~

~~(m) “State facility” means a building, structure, or vehicle owned or operated by the state or its agencies, departments, or integrated waste franchisee, that is located within the state.~~

~~(n)~~

(k) “Take-out food container” means a container used to contain food taken “to go” from a restaurant or retail food vendor, including left-over food from meals eaten on the premises of a restaurant and food packaged to be eaten outside the premises of the restaurant or retail food vendor.

49761. (a) Except as provided in paragraph (1) of subdivision

(b), a food vendor, restaurant, or retail food vendor shall not

1 dispense prepared food to a customer in a disposable-expanded
2 polystyrene food container, a disposable nonrecyclable plastic
3 food container, or a disposable nonrecycled *content* paper
4 container.

5 ~~(b) (1) (A) A food vendor, restaurant, or retail food vendor~~

6 ~~(b) A food vendor~~ may dispense prepared food to a customer in
7 a compostable plastic container in a jurisdiction where organic
8 waste is collected curbside for composting.

9 ~~(B) To comply with subparagraph (A), a compostable plastic~~
10 ~~container shall be labeled with the number “7” resin code~~
11 ~~established by the American Chemistry Council and clearly labeled~~
12 ~~as “compostable meeting ASTM D6400.”~~

13 ~~(2) A food vendor, restaurant, or retail food vendor may dispense~~
14 ~~prepared food in a recyclable plastic food container or a recycled~~
15 ~~paper container.~~

16 ~~(c) (1) A state facility shall not use a polystyrene foam or~~
17 ~~expanded polystyrene foam food service container.~~

18 ~~(2) A state department or agency shall not purchase or acquire~~
19 ~~polystyrene foam or expanded polystyrene foam disposable food~~
20 ~~service ware for use at state facilities.~~

21 ~~(d) A state-managed concession, state-sponsored event, or event~~
22 ~~with a permit issued by the state shall not distribute or utilize~~
23 ~~disposable food service ware containing expanded polystyrene,~~
24 ~~polystyrene, nonrecyclable plastic, or nonrecycled paper.~~

25 ~~(e) An agent, contractor, or vendor doing business with the state~~
26 ~~shall not use polystyrene foam, expanded polystyrene foam,~~
27 ~~nonrecycled paper, or nonrecyclable plastic disposable food service~~
28 ~~ware in state facilities or on state projects within the state.~~

29 ~~49762. The Legislature finds and declares that the matters~~
30 ~~addressed in this chapter are matters of statewide concern.~~

31 ~~49763.~~

32 49762. If a section, subdivision, sentence, clause, or phrase of
33 this chapter is held to be invalid or unconstitutional by a court of
34 competent jurisdiction, the decision shall not affect the validity of
35 the remaining portions of this chapter. The Legislature finds and
36 declares that it would have passed this chapter and each and every
37 section, subdivision, sentence, clause, and phrase not declared
38 invalid or unconstitutional without regard to whether any portion
39 of the chapter subsequently would be declared invalid or
40 unconstitutional.

1 49763. *This chapter does not preempt the authority of a county,*
2 *city, or city and county to adopt and enforce additional single-use*
3 *take-out food packaging ordinances, regulations, or policies that*
4 *are more restrictive than the applicable standards required by this*
5 *chapter.*

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